

volving petitioner Pelley (Pet. 45), that they were hearsay as to petitioners Brown and Fellowship Press, Inc. (Pet. 45), who were not connected by evidence with the publications (Pet. 46, 50) <sup>13</sup> that

(1938) (Gov. Ex. 30, R. 506-507); (6) a pamphlet or leaflet entitled "Silver Shirts of America are Mobilizing to Protect Your Life! How Much Are You Willing to do for Them?" (1933) (Gov. Ex. 34, R. 497-498).

<sup>13</sup> It is conceded that petitioner Pelley wrote and published the articles (Pet. 46). They were issued by Pelley Publishers and Skyland Press (R. 299, 300, 301-302; see also R. 506, 516-517), the predecessor organizations (R. 298, 299, 300, 302, 303, 488; see also R. 506, 516-517) of petitioner Fellowship Press, Inc., which issued the seditious articles and were controlled by petitioners Pelley and Brown (R. 291, 292, 296, 373, 374). A copy of each of the exhibits, with the exception of Gov. Ex. 30, was seized in executing a search warrant April 4, 1942, at the premises of petitioner Fellowship Press, Inc. (R. 305, 491, 497). The connection of petitioner Brown was also established. He was employed by the Pelley organization in 1937 or 1938 (R. 299) when it operated through Pelley Publishers or Skyland Press (R. 298, 299, 300, 302, 303; see also R. 506, 516-517), and was an incorporator and responsible officer of petitioner Fellowship Press, Inc., from the time of its incorporation, November 25, 1940 (R. 291), through the time when the search warrant was executed (R. 291, 296, 373, 374). We submit petitioners' connection with the exhibits was sufficiently established. See *Gowled v. United States*, 255 U. S. 298, 309, 312; *United States v. Cooper*, 288 Fed. 604, 610-611 (N. D. Iowa), reversed on other grounds, 9 F. (2d) 216 (C. C. A. 8). Moreover, if the connection of petitioners Brown and Fellowship Press, Inc., had not been established, they would not be in position to complain, since the trial court in effect restricted this evidence to petitioner Pelley in instructing the jury that it was not to be used in respect of the other defendants unless they were found to have assisted or aided in writing, publishing, circulating, or distributing it (R. 560-561).

they were not pertinent to the issues of willfulness and intent (Pet. 50), and were incompetent because published before the war when it was legally impossible to violate or conspire to violate the sedition statute (Pet. 45-47, 48).

As the court below held (R. 654, 662), this evidence was plainly admissible on the issue of the willfulness and intent of petitioners in making the seditious statements, and the trial court's instructions limited the jury's consideration of these documents to that narrow issue (R. 560-561). The pre-war articles outlined the origin, purposes, and activities, and defined the ideological and political relationships, of the Pelley organization, assimilating them in material respects to those of the Axis nations and their totalitarian leaders. They disclose a continuing and persistent attitude consistent with the pro-Axis state of mind reflected in the statements alleged in the indictment.<sup>14</sup> See *Debs v. United States*, 249

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<sup>14</sup> E. g., (1) "One night in August, 1929, it was, that I had more revelation \* \* \*. Clearer and clearer came the reasoning Intelligence \* \* \*. In three years or thereabout, you will find yourself at the head of a national vigilante organization, a quasi-military force, which you will project and bring to strange flower. \* \* \*

"When will it happen? \* \* \*

"Over in Europe at this moment exists a young Austrian \* \* \*. By trade he is a painter \* \* \*. He will become the great power in Central Europe. \* \* \* The day that this man ascends into the chancellorship of the German people, do you take it as your time-signal to launch your organization in America! \* \* \* I saw

U. S. 211, 215; *Williamson v. United States*, 207 U. S. 425, 451; *Allis v. United States*, 155 U. S. 117, 119; *Wood v. United States*, 16 Pet. 342, 360-361; *Schoborg v. United States*, 264 Fed. 1, 7 (C. C. A. 6), certiorari denied, 253 U. S. 494; *Howenstine v.*

eight-column headlines. \* \* \* The date was January 30, 1933. \* \* \* Adolf Hitler Becomes German Chancellor. \* \* \* 'Tomorrow,' I announced, 'we have the Silvershirts!' \* \* \*

"George Anderson [said], \* \* \* 'You go working on people's feelings, getting them to follow you in numbers, and the first thing you know, they'll overthrow the government!'

"'Even if that happened,' I told George quietly, 'I'd know what to do. \* \* \*'" (Gov. Ex. 13; R. 308, 309-310, 311).

(2) "Do you know that this strictly Christian Militia, The Silver Shirts of America, means to save America as Mussolini and his Black Shirts saved Italy, and Hitler and his Brown Shirts saved Germany—but without altering our republican, representative form of Constitutional Government, if it can be managed?" (Gov. Ex. 34; R. 498).

(3) "\* \* \* In 1934 he [Pelley] married a German wife. He is 100 percent pro-German in his sympathies \* \* \* [Pelley] believes that with his Party in control a rapport can be entered into with Adolf Hitler's Nazi Government by which non-Jewish Germany and the non-Jewish United States \* \* \* can promote Nordic-Aryan culture so that it overwhelmingly dominates the political situation of the world!" (Gov. Ex. 15; R. 503, 504, 505).

(4) "I feel certain that the German Chancellor and I will understand one another. The similarity of our background and our efforts could scarcely have it otherwise" (Gov. Ex. 16; R. 506).

(5) "It is a fact which posterity will attest, that Chief Pelley of The Silvershirts was the first man in the United

*United States*, 263 Fed. 1, 6 (C. C. A. 9); *Stenzel v. United States*, 261 Fed. 161, 162 (C. C. A. 8); *Shidler v. United States*, 257 Fed. 620, 623 (C. C. A. 9); *Herman v. United States*, 257 Fed. 601, '603 (C. C. A. 9), certiorari denied, 251 U. S. 558; *Coldwell v. United States*, 256 Fed. 805, 812 (C. C. A. 1), certiorari denied, 250 U. S. 661; *Kirchner v. United States*, 255 Fed. 301, 304-305 (C. C. A. 4), certiorari dismissed, 250 U. S. 678. Furthermore, the trial court has discretion in the admission of evidence which discloses intent (*Glasser v. United States*, 315 U. S. 60, 81; *Partridge v. United States*, 39 App. D. C. 571, 576), and a wide latitude is permitted when it is an important element of an offense. *Hallock v. United States*, 185 Fed. 417, 424-425 (C. C. A. 8), certiorari denied, 220 U. S. 613.<sup>15</sup>

States to step out openly in support of Adolf Hitler and his German Nazi program" (Gov. Ex. 18; R. 508).

(6) "American-born Nipponese have suddenly 'come awake' to the efforts which Chief Pelley is exerting—in behalf of embattled forces of Nippon in China—among enlightened Americans. Letters continue to arrive from Japanese in all parts of the United States commending and pledging their future support to the Silver Legion work" (Gov. Ex. 30; R. 507).

<sup>15</sup> Petitioners also complain (Pet. 13, 45, 47) of the admission in evidence of a Registration Statement of the German Library of Information, to the effect that it maintained a library on the social, cultural, political, and economic development of Germany, that it published "Facts in Review" and official German "White Books," and that it sponsored a radio program entitled "Germany Calling" (Gov. Exs. 33, 33-A, 33-B, 33-C, 33-D, R. 497). These Exhibits were properly received in evidence as ex-

2. Petitioners claim error in the admission in evidence of testimony as to the consistency of statements printed in the December 22, 1941, through March 2, 1942, issues of the *Galilean* magazine with major German short-wave broadcast propaganda themes, and, of an analysis of newspaper editorials in refutation of certain statements alleged in the indictment to be false (Pet. 13-14, 51-54). Petitioners' arguments that this testimony consisted of hearsay and opinions, of matters not binding on them, and of self-serving declarations on the part of the Government (Pet. 51, 52, 53, 54) are not well taken.

Witness Graves testified that the Propaganda Analysis Division of the Foreign Broadcast Intelligence Service, Federal Communications Commission,<sup>16</sup> made a propaganda analysis of the content of German short-wave broadcasts (R. 458, 459),<sup>17</sup> with material tuned in upon and trans-

planatory of the Axis character and source of much of the literature (R. 494-495, 497) seized at the premises of petitioner Fellowship Press, Inc., in execution of a search warrant (R. 491, 495, 497) (see *Gouled v. United States, supra*) and as pertinent to the issue of intent and willfulness.

<sup>16</sup> Mr. Graves was Assistant to the Director of the Foreign Broadcast Intelligence Service of the Commission (R. 455) and had personal supervision of the Propaganda Analysis Division (R. 459-460). He qualified as an expert in the field concerning which he testified (R. 456).

<sup>17</sup> The analysis was the product of staff work, conferences, exchanges of views, and, finally, classification according to material at hand (R. 458, 459, 470).

scribed since May 1941 by the Commission's Monitoring service (R. 458, 459, 460, 461), delineating 14 major German broadcast propaganda themes (R. 459, 460, 462-463).<sup>18</sup> Witness Lasswell<sup>19</sup> testified that he and analysts working under his direct supervision made an analysis of the statements in 157 articles in the *Galilean* magazine, issues during the period December 22, 1941, through March 2, 1942 (R. 473-476), and ascertained that there were 1,195 statements consistent with and 45 statements inconsistent with the 14 German propaganda themes (R. 481).<sup>20</sup> These results of the analysis were illustrated by charts (R. 477-482).

<sup>18</sup> The themes, in substance, condemn as corrupt and morally unjustifiable the internal conditions in and the foreign policies of the United States and Great Britain; brand as reprehensible the President of the United States and the Prime Minister of Great Britain; characterize Nazi Germany as just and virtuous and the foreign policies of Japan as morally justifiable; assert that the United States and Great Britain are weak while Nazi Germany and Japan are powerful; that the United Nations are disunited, and that the United States and the world are menaced by Plutocrats, Jews, and Communists (R. 462-463).

<sup>19</sup> Dr. Lasswell is the head of the Research on War Communications Section, Library of Congress (R. 471). He is an expert in propaganda analysis (R. 471, 472, 473, 483).

<sup>20</sup> Dr. Lasswell was prepared to produce and refer to each of the statements catalogued in the making of the analysis (R. 476, see also R. 477), and the volume containing the analysis was available for purposes of cross-examination (R. 476-477).

Witness Richter testified that aided by four fellow newspaper analysts (R. 435, 448, 449, 454),<sup>21</sup> she made a study of 834 issues of 52 daily newspapers, published in related sections of the United States at pertinent times (R. 435, 436, 437, 438, 444; 440, 441, 444-445; 442, 445; 443, 444, 445), and found that five of petitioners' statements relating to the state of public opinion alleged in the indictment to be false<sup>22</sup> were refuted by 280 editorial statements (R. 435).<sup>23</sup>

<sup>21</sup> Richter is a newspaper analyst in the Media Division, Bureau of Intelligence, Office of War Information (R. 434-435). She supervised the study (see R. 435, 448, 450, 454), and by education and experience can be considered to be an expert (R. 445, 446, 447, 448).

<sup>22</sup> The statements were: "From North Carolina to Seattle \* \* \* you can \* \* \* hear scarcely a word of condemnation of the Nipponese, Germans or Italians" (Count 2, R. 5; R. 436). "It is a fact that nobody in the whole United States had \* \* \* feeling \* \* \* against Japan, or Hitler, excepting racial blocs of refugees \* \* \*" (Count 3, R. 6; R. 437, 438). "There is not the slightest enthusiasm \* \* \* in \* \* \* America for this war—with the sole exception of the Jewish ghetto sections \* \* \*" (Count 5, R. 8, R. 439, 440). "The typical American \* \* \* is reaching a mood of civic surliness where unwittingly he gloats when \* \* \* the Axis Powers report successes \* \* \*" (Count 7, R. 10, R. 441, 442). "No realist in his senses would contend that there is any unity in this country for the war's prosecution. \* \* \*" (Count 8, R. 11; R. 443).

<sup>23</sup> The witness had with her a report containing copies of the extracted editorials (R. 450, 451, 454), and the newspapers from which they were taken were in the courtroom; petitioners' counsel were acquainted with the availability of this material (see R. 450, 451, 454). However, neither the report, the editorials, nor the newspapers were introduced in evidence.

We think it is clear that the testimony of Graves and Lasswell was entirely relevant to the issues at the trial. As the court below pointed out, their testimony enabled the jury "to get a better understanding of the intent which prompted Pelley in distributing what the jury could have found was second-handed Axis propaganda" (R. 657, 662).<sup>24</sup> Similarly, the testimony of Richter was plainly relevant to the issues whether petitioners' statements were false; each statement contained broad assertions of fact relating to the state of public opinion which, by their very nature, were susceptible of refutation or confirmation by editorial columns of the daily press.

The competency of this evidence is equally clear. Contrary to petitioner's contention (Pet. 51-54), the testimony of Graves and Richter was not within the rules against hearsay but, rather, was admitted to prove the "fact of utterance" as distinguished from the "truth of utterance." See

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<sup>24</sup> In addition to these analyses, the seditious nature of petitioners' statements was further shown by an article in the December 22, 1941 issue of the *Galilean* placing responsibility on the State Department for the Japanese attack upon the United States (Gov. Ex. 2; R. 321-323) closely paralleling the theme and content of an Italian shortwave broadcast of December 8, 1941 (Gov. Ex. 42; R. 316, 317, 318, 320), a written extract of which was seized in execution of a search warrant from petitioner Pelley's residence on April 4, 1942 (R. 316, 317, 318-320). Furthermore, the columns of the *Galilean* contained a reference to European shortwave reports of large British shipping losses (R. 356).



*Murray v. United States*, 10 F. (2d) 409, 411 (C. C. A. 7), certiorari denied, 271 U. S. 673; Wigmore, *Evidence* (3d ed., 1940), secs. 1788-1790. Insofar as the testimony of Graves, Lasswell and Richter reflected the results of analyses made by assistants, it clearly falls within the rule that permits a competent supervising agent to summarize the contents of voluminous or complicated records, even though the supervisor has not personally examined each record, if the records are present in court and available for purposes of cross-examination. Cf. *Burton v. Driggs*, 20 Wall. 125, 136; *United States v. Mortimer*, 118 F. (2d) 266, 269-270 (C. C. A. 2), certiorari denied, 314 U. S. 616; *Cooper v. United States*, 91 F. (2d) 195, 198 (C. C. A. 5); *Massachusetts Bonding & Ins. Co. v. Norwich Pharmacal Co.*, 18 F. (2d) 934, 937 (C. C. A. 2); *Cooper v. United States*, 9 F. (2d) 216, 223 (C. C. A. 8); *E. I. Du Pont de Nemours & Co. v. Tomlinson*, 296 Fed. 634, 640 (C. C. A. 4), certiorari denied, 273 U. S. 696; *Hart v. United States*, 183 Fed. 368, 373 (C. C. A. 6), certiorari denied, 220 U. S. 609; Wigmore, *supra*, sec. 1230.<sup>25</sup>

<sup>25</sup> The hearsay rule is inapplicable for the further reason that the records were compiled by Government officials in the course of their official duties. Cf. *Evanston v. Gunn*, 99 U. S. 660, 666-667; *Bost v. United States*, 103 F. (2d) 717, 721 (C. C. A. 9); *Long v. United States*, 59 F. (2d) 602, 603, 604 (C. C. A. 4); *Chesapeake & Delaware Canal Co. v. United States*, 240 Fed. 903, 907 (C. C. A. 3), affirmed, 250 U. S. 123.

## CONCLUSION

The case was correctly decided below. There is presented neither a conflict of decisions nor any question calling for further review. We therefore respectfully submit that the petition for a writ of certiorari should be denied.

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FEBRUARY 1943.